

1987). “The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus briefs should not be allowed. They are an abuse.” *Ryan v. Commodity Futures Trading Com’n.*, 125 F.3d 1062, 1063 (7th Cir. 1997).

An *amicus* is to be a friend of the court, not a friend of a party. *Ryan v. Commodity Futures Trading Com’n.*, *supra* 125 F.3d at 1063. “When the party seeking to appear as *amicus curiae* is perceived to be an interested party or an advocate of one of the parties to the litigation, leave to appear as *amicus curiae* should be denied.” *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.* 149 F.R.D. 65, 82 (D.N.J. 1993)

An *amicus* brief should only be allowed by the Court when (1) a party is not represented competently by counsel, or not at all; (2) when the *amicus* has an interest in some other case that may be affected by the decision in the present case; or (3) when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *Ryan v. Commodity Futures Trading Com’n.*, *supra* 125 F.3d at 1063

A. The AFL-CIO admits its support of the Respondent.

On the face of its Motion the AFL-CIO states that it supports the Respondent and requests leave to participate as *amicus curiae* in support of

the National Labor Relations Board. Thus, friend of a litigant not a friend of the Court in direct contravention to the ruling in *Ryan v. Commodity Futures Trading Com'n.*, *supra* 125 F.3d at 1063

B. The National Labor Relations Board is competently represented by legal counsel

In the present case, the National Labor Relations Board is represented by General Counsel appointed by the President of the United States and affirmed by the Senate. The General Counsel is responsible for all arguments regarding appeals of all National Labor Relations Board decisions thus making them more than competent to represent the National Labor Relations Board in this matter.

C. The AFL-CIO has not demonstrated that it has an interest in some other case that may be affected by the decision in this litigation.

AFL-CIO's Motion does not identify any pending case that may be affected by the decision in the present case. Instead, it asserts that the present case presents "important issues regarding the NLRB's authority to order back pay awards to remedy violations of the National Labor Relations Act." This Court does not need an *amicus* brief to determine the authority of the NLRB to order back pay awards. Back pay awards have only been rejected in the past because of "serious illegal conduct" on the part of the employee. *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002). That is not the case here.

D. The AFL-CIO brings no unique information or perspective that the General Counsel is unable to provide.

In its Motion the AFL-CIO has failed to show that it possesses unique insight that is unavailable to counsel for either party or that will affect the outcome of this dispute. The Motion states that because the charging party in this case has failed to intervene the AFL-CIO will bring the views of a labor organization. It is not Petitioner's problem nor that of the court that the charging party has failed to intervene. The charging party has an absolute right to intervene in this matter and its failure to do so should not allow the AFL-CIO to more or less simply step into their shoes.

SUMMARY

Based on the foregoing the AFL-CIO does not meet any of the allowances outlined by the *Ryan* court and have failed to present any convincing reasons why its participation is necessary. If this court allows it to participate as an *amicus curiae* it will be unfairly prejudice the Petitioner in this matter.

WHEREFORE, Petitioner, LATINO EXPRESS, INC., prays this Honorable Court deny the AFL-CIO's Motion for Leave to Participate as *Amicus Curiae* in support of Respondent.

Dated: March 9, 2015

Respectfully submitted,

/s/ Andre Ordeanu

Andre Ordeanu

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2015, the foregoing Petitioner's Response to Motion for Leave to Participate as *Amicus Curiae* in Support of Respondent was filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The following participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

Linda Dreeben
Robert J. Englehart
Jare David Cantor
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

The undersigned has sent a copy to:

Matthew J. Ginsburg
815 16th Street, NW
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by placing a true and correct copy of same in the U.S. Mail located at 400 N. LaSalle, Chicago, Illinois on March 9, 2015, before the hour of 5:00 P.M. with proper postage prepaid. Under the penalties of perjury, I certify that the above statements set forth herein are true and correct.

//s/ Andre Ordeanu

Andre Ordeanu

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